



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

SFUND RECORDS CTR  
**2261069**

January 25, 2007

Leslie R. Schenck  
Omega Chemical Site PRP Organized Group  
Garvey Schubert Barer  
1191 Second Avenue  
Seattle, WA 98101-2939

RE: EPA Request for Reimbursement of Oversight Costs 2005-2006  
Omega Chemical Superfund Site (SSID 09BC)

Dear Ms. Schenck:

I am writing in response to your January 8, 2007 letter to Bruce Gelber of the U.S. Department of Justice (DOJ) and Keith Takata of the U.S. Environmental Protection Agency (EPA). In that letter, the Omega Chemical Site PRP Organized Group (OPOG) provided notice of dispute regarding EPA's November 28, 2006 letter requesting payment of the subject oversight costs. As communicated by EPA's Assistant Regional Counsel on January 12, 2007, EPA is treating your letter as initiation of informal, rather than formal, dispute resolution under the Partial Consent Decree with OPOG (Partial CD). Paragraph 55 provides that disputes arising under the Partial CD are subject first to informal negotiations. After the conclusion of the informal dispute period, OPOG has seven days to initiate formal dispute resolution pursuant to Paragraph 56.a of the Partial CD. Unless we hear otherwise from you, we will treat the informal dispute period as ending on January 28, 2007, after which OPOG can initiate formal dispute resolution if it so communicates. EPA, however, is willing to extend the informal dispute period, as explained in this letter.

The Partial CD (Paragraph 44) requires EPA to provide a "Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors." EPA disagrees with your contention that the detailed descriptions of services provided by EPA and CH2M Hill (Hill) is inadequate under the Partial CD. The documentation EPA has provided, supporting reimbursement of the 2005-06 oversight costs, is consistent with the Partial CD and is of the specific type of documentation that has been upheld in numerous court cases.

Over the past four billing cycles, EPA has provided increasingly detailed information to OPOG in support of its requests for reimbursement. After not invoking the dispute resolution process for either of the first two billing cycles (i.e., 2001-02 and 2002-03), OPOG disputed EPA's 2003-04 oversight bill, requesting additional documentation regarding costs incurred by Hill. Although not required to do so, EPA provided a summary of the Monthly Status Reports (MSRs) prepared by Hill, as well as a copy of EPA's Statement of Work for Operable Unit One (OU-1), describing in detail the nature of support that Hill provides to EPA for OU-1 activities. After receiving the

additional documentation, OPOG paid the 2003-04 bill.

For the 2004-05 billing cycle, OPOG requested even more detailed information than for the previous cycle and disputed EPA's entire bill. After meeting with OPOG attorneys, EPA provided copies of three complete MSRs to resolve the dispute, and offered to provide MSRs for the additional months if OPOG desired. Based on its review of the complete MSRs, OPOG requested that EPA provide the narrative summary and "Report 1" from each MSR for the billing period. EPA complied with this request. As you are aware, the MSRs document the type of work performed by identified Hill employees, the amount of time spent on the work, and the hourly rates of these employees. With one exception, these MSRs provide all of the information that you requested in your letter; the MSRs do not identify the actual date on which the work was performed. They do, however, by their nature, identify the month in which the work was performed. OPOG paid the 2004-05 bill without requesting the additional complete MSRs.

For the 2005-06 oversight bill, OPOG has requested copies of Hill's time cards or equivalent documentation. OPOG may have a misconception about the type and amount of information on these time cards. The time cards document the number of hours each employee charges to a specific account number each day, and contain space for additional notes. Hill personnel are not required to make additional notes, but often do so, in order to facilitate completion of the MSRs. Thus, the time cards inherently provide less detailed descriptive information than the corresponding MSRs. To be sure that OPOG understands the information available from Hill's time cards, we have enclosed a sample time card for OPOG's review. For the reasons we have discussed in the past with OPOG, EPA is neither prepared nor required to provide Hill's time cards in connection with EPA's request for reimbursement of oversight costs.

The National Contingency Plan (NCP) requires that EPA "shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be *sufficient* to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, *accurate* accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment." 40 C.F.R. § 300.160(a)(1) (2006). (emphasis added).

Courts interpreting what is required under the NCP have repeatedly rejected the notion that documents beyond cost summaries must be provided for a full accounting. See, e.g., *United States v. W.R. Grace & Co.*, 429 F.3d 1224 (9th Cir. 2005), affirming 280 F. Supp. 2d 1149 (D. Mont. 2003); *United States v. Chapman*, 146 F.3d 1166, 1171-72 (9th Cir. 1998). Courts have not required the presence of any particular document or type of document in their analysis of cost documentation. They have merely required that the documentation be "adequate" or "sufficient" to support the cost claim. The same approach has been applied in numerous other circuits and district courts. See, e.g., *See United States v. Chrysler Corp.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001) (holding that contractor's invoices, which broke down expenses into eight general categories such as labor, travel and subsistence, were sufficiently specific standing alone to meet

Ms. Leslie R. Schenck  
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the requirements of 40 C.F.R. § 300.160(a)(1) of the NCP, in spite of contractor's failure to provide "project daily summaries, project daily details, reimbursable travel and subsistence logs, contractor personnel reports, equipment usage logs, and subcontractor reports"); *see also State v. Neville Chem. Co.*, 213 F. Supp. 2d 1134, 1139 (C.D.Cal. 2002) (rejecting the argument that a specific description of specifically what task an employee was engaged in at a particular time is required).

In summary, EPA strongly believes that the documentation already provided in support of our request for reimbursement of the 2005-06 oversight costs is adequate under the Partial CD, and is consistent with the documentation upheld in numerous court cases. Although EPA has not provided complete MSRs with its request for reimbursement of the 2005-06 oversight costs, EPA is willing to provide the Report 1 section from the MSRs upon OPOG's request, in order to resolve this dispute. We are also willing to extend the informal dispute period by 14 days, or until February 12, 2007, to allow OPOG additional time to evaluate its position regarding the additional documentation. If you desire this additional time, please let us know.

If you have any questions about this letter, please contact Steve Berninger, Assistant Regional Counsel (415-972-3909). We look forward to hearing from you.

Sincerely,



Frederick K. Schauffler  
Chief, Site Cleanup Section 4  
Superfund Division

Enclosure

cc: Steve Berninger  
Chris Lichens  
Elaine Chan  
Karl Fingerhood, DOJ  
Keith Millhouse, OPOG

# 19-JAN-2007 Timesheet for:

For this sheet -- Client: 103.13% -- BD: 0.00% -- Recovery: 0.00% -- Overhead: 0.00%

Show me this person's client ratio history

Row	Project Number	Description	Project Type	Total Hours	Sat.	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.
1	PTO	PAID TIME OFF		8				8			
2	173165.DV.60.61.OM		CLIENT	3					1	1	1
3	335366.RO.05	RA OVERSIGHT: AIRPORT	CLIENT	1							1
4	338464.RI.01	DETAILED RESIDENT IN	CLIENT	1							1
5	338464.PJ.02	SYSTEM PERFORMANCE	CLIENT	2							2
6	353060.10.06.05	OPS & MAINTENANCE	CLIENT	8				2	2	3	1
7	353071.10.06.05	OPS & MAINTENANCE	CLIENT	4				2	1	1	
8	353077.10.06.05	OPS & MAINTENANCE	CLIENT	8				2	2	2	2
9	353081.10.06.05	OPS & MAINTENANCE	CLIENT	6				2	2	1	1
Totals				41.0	0.0	0.0	8.0	9.0	8.0	8.0	8.0

## Explanations for after-the-fact timesheet changes, additions, or deletions:

- Hour change from 0 to 1 hours on Tue made on Wed - Worked additional hours (row 2)
- Hour change from 0 to 1 hours on Thu made on Fri - Forgot to record time (row 2)
- Hour change from 0 to 2 hours on Thu made on Fri - Forgot to record time
- Hour change from 2 to 3 hours on Thu made on Fri - Forgot to record time (row 6)

## Comments from this timesheet:

- Row 2, Tue - Edit tables for 2006 report.
- Row 2, Wed - Edit tables for 2006 report.
- Row 2, Thu - Work on annual, monthly discharge reports.
- Row 3, Fri - Conduct site visit for treatment plant construction.
- Row 4, Fri - Take photos of site resoration.
- Row 5, Fri - Download transducer data, pull transducer from WG-1.

Click [here](#) to close this window.